

~~ADMINISTRATIVE-INTERNAL USE ONLY~~

Journal - Office of Legislative Counsel
Monday - 27 August 1973

Page 2

STATINTL

5. (Internal Use Only - LLM) In the company of [REDACTED] met with Herb Roback, Staff Director, House Government Operations, concerning the problems raised by H.R. 5425 (Amendments to Freedom of Information Act). Roback was completely sympathetic with our position; called in Counsel-Administrator, Miles Romney, for a status report on the bill; and asked Romney to write a memorandum for Chairman Holifield, covering a number of areas of concern, including those we had raised. Roback assured us that he would handle this with utmost discretion and the points we had raised could be covered generally without specifically fingering CIA. I told Roback we appreciated his understanding, since we were interested in staffing out the problem and we would not want our visit to be misconstrued as an official representation by the Agency. Roback felt he could keep the situation well in hand and said he would contact us if any problems arose. He also said it would be premature for Slatinshek to delve into the matter too deeply at this time, but appreciated that we had to keep Slatinshek informed.

6. (Unclassified - GLC) Called Ed Bauser, Executive Director, Joint Committee on Atomic Energy, regarding his letter of 15 August referring to Joe Alsop's column on Soviet and US MIRV systems. I told Bauser I thought events (the Secretary of Defense's press conference) had overtaken his letter regarding possible leaks in the Alsop-article, but offered to have Dave Brandwein come up and brief him on the Soviet program. Bauser said the Secretary's press conference did not explain how Alsop had prior access to this information, which had not been brought to the Joint Committee's attention. I pointed out that in the Director's testimony on 13 June 1972 he had mentioned that we were expecting the Soviets to develop a MIRV capability and this really wasn't a surprise. In any event, it was agreed that Brandwein and I would brief Bauser and Seymour Shwiler, of the staff, at 10:30 tomorrow morning.

[REDACTED]

STATINTL

Acting Legislative Counsel

cc:

O/DDCI

Executive Secretariat

[REDACTED]

STATINTL

Mr. Houston

Mr. Thuermer

[REDACTED]

STATINTL

H. R. 5425

Status:

The Subcommittee on Foreign Operations and Government Information of the House Government Operations Committee is marking up H. R. 5425.

Provision:

The bill amends the Freedom of Information Act (5 USC 552) by:

(1) requiring a court review in camera of any records to determine the sufficiency of an exemption claimed under the Act, including classified material (section 1 (d)(1) and (2)). This overrules the Supreme Court decision in the case of Representative Patsy Mink v. EPA, 35 L Ed 2d 119, which precluded a court review of classified material.

(2) requiring any agency to provide any information or records requested by Congress or any committee of Congress (section 3).

(3) requiring only a "reasonable" description of a document requested rather than the present "identifiable records" (section 1 (d)), and requiring each agency to submit an annual report to the Congress on the number of requests received and action taken (section 4).

Problem:

(1) A court determination under the bill overruling a determination by the Director could directly conflict with the responsibility imposed upon the Director by proviso in section 102 (d)(3) of the National Security Act of 1947:

"And provided further, That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;...."

(2) Complete access to all CIA information by the current 347 committees and subcommittees in the Congress increases the possibility of compromising sensitive intelligence sources and methods.

Proposed Amendment for H. R. 5425:

(1) Amend section 2 by adding at the end of line 6, page 4, the underscored words: "In the case of any agency records which the agency claims are within the purview of subsection (b)(1), such in camera investigation by the court shall be of the contents of such records in order to determine if such records, or any part thereof, cannot be disclosed because such disclosure would be harmful to the national defense or foreign policy of the United States. The preceding examination and investigation shall not apply to agency records involving matters under section (b), relating to the responsibility for protecting intelligence sources and methods from unauthorized disclosure under section 403 and 403 (G) of title 50, United States Code."

(2) Amend section 3 by inserting after the word "Congress" on line 5, page 6, the underscored words: "(2)(a) Notwithstanding subsection (b), any agency shall furnish any information or records to Congress or any committee of Congress within the jurisdiction of such committee promptly upon written request to the head of such agency by the Speaker of the House of Representatives, the President of the Senate, or the chairman of any such committee, as the case may be.